

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL RAILROAD, INC.,
Plaintiff,

v.

SPRINGFIELD TERMINAL RAILWAY
COMPANY and BOSTON AND MAINE
CORPORATION,
Defendants

Civil Action No.: 04-30235-MAP

**PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF ROGER D.
BERGERON FILED IN SUPPORT OF THE DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND/OR FOR OTHER APPROPRIATE RELIEF**

The plaintiff, New England Central Railroad ("NECR"), moves, pursuant to Fed. R. Civ. P. 26, 37, and 56, that this Honorable Court strike the *Declaration of Roger D. Bergeron in Support of Defendant/Counterclaimant's Motion for Partial Summary Judgment* ("Declaration"), on the grounds that: (1) the defendants failed to disclose or provide information set forth by Mr. Bergeron in his *Declaration* within their automatic required disclosures or answers to the NECR's interrogatories, and failed to provide a written expert report concerning Mr. Bergeron's opinions; (2) Mr. Bergeron destroyed notes and data concerning his calculations and measurements taken at the point of derailment, he and an assistant failed to preserve evidence concerning the appearance track structures at the point of derailment, the defendants failed to produce a complete copy of Mr. Bergeron's subsequent notes, and the defendants "lost" Conductor Scappace's initial incident report, as well as two copies thereof; (3) Mr. Bergeron is clearly not qualified to render opinions concerning operational and mechanical concerns; and (4)

Mr. Bergeron substantially misled the court as to the testimony of other witnesses regarding facts and circumstances of the condition of the track, the FRA geometry testing, and the happening of the derailment.

In the alternative, the NECR has requested that the court order that Mr. Bergeron produce an expert written report setting forth a complete statement, basis, and the reasons for his opinions pursuant to Fed. R. Civ. P. 26(a)(2)(B); that it be given an opportunity to depose Mr. Bergeron and then retain and identify its own expert concerning the matters on which Mr. Bergeron opines; and to provide to the court an affidavit opposing the assertions made by Mr. Bergeron.

The NECR also files herewith the *Plaintiff's Memorandum of Law in Support of its Motion to Strike the Declaration of Roger D. Bergeron filed in Support of the Defendants' Motion for Summary Judgment and/or for other Appropriate Relief* for the court's consideration.

WHEREFORE, the NECR requests that this Honorable Court strike the *Declaration of Roger D. Bergeron in Support of Defendant/Counterclaimant's Motion for Partial Summary Judgment* or grant to it the alternative relief as set forth above.

Respectfully submitted,
NEW ENGLAND CENTRAL RAILROAD, INC.,
by its attorneys,

/s/ Richard A. Davidson, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the attached pleading was sent by
1st Class U.S. Mail - Postage Prepaid/In-Hand/Facsimile/Electronic Mail to all counsel of record.

Signed under the pains and penalties of perjury.

Richard A. Davidson, Jr.
Dated: 4-26-07

Dated: April 26, 2007